

STATE OF MICHIGAN
COURT OF APPEALS

CORINA PHYLLIS WILLIAMS,
a/k/a CORINA PHYLLIS SWEET,

Plaintiff-Appellee,

v

STANLEY MAURICE WILLIAMS, JR.,

Defendant-Appellant.

UNPUBLISHED

June 23, 2005

No. 257617

Washtenaw Circuit Court

LC No. 99-014943-DM

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying his motion to change physical custody of the parties' two minor children. We vacate the order and remand for proceedings consistent with this opinion.

Plaintiff and defendant entered into a consent judgment of divorce in October 1999. The judgment awarded plaintiff sole physical and legal custody of the parties' two minor children, and awarded defendant reasonable parenting time. The relationship between the parties is acrimonious and contains a history of court-moderated disputes regarding defendant's parenting time, the procedure under which the parties are to exchange the children, and a failed attempt by defendant to obtain sole physical custody of the children. It also contains a history of altercations between the parties, which resulted in defendant's convictions of stalking and aggravated stalking, and subsequent probation. On January 30, 2004, plaintiff discovered that her current husband had been sexually abusing the children, and had also abused plaintiff's half-sister. Plaintiff notified the police and defendant of the abuse, and subsequently divorced her husband. The trial court granted defendant's emergency motion for temporary custody on February 20, 2004, and later ordered that an evidentiary hearing be conducted to determine the children's permanent custody. After conducting the hearing, and interviewing the older child, the trial court issued an opinion denying defendant's motion for change of custody.

Three different standards of review are applicable in child custody proceedings. All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). "The clear legal error standard applies where the trial court errs in its choice, interpretation, or application of the existing law." *Foskett v Foskett*, 247 Mich App 1, 4-

5; 634 NW2d 363 (2001). The great weight of the evidence standard applies to all findings of fact; a trial court's findings as to the existence of an established custodial environment and as to each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher, supra* at 879; *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). The abuse of discretion standard applies to the trial court's discretionary rulings; to whom custody is granted is such a discretionary disposition ruling. *Fletcher, supra* at 879-880.

Defendant first argues that the trial court's factual findings in its determination that an established custodial environment existed with plaintiff were insufficient and constituted clear legal error. We agree. Whether an established custodial environment exists is a question of fact that must be addressed by the trial court before it determines what is in the child's best interest. *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000). An established custodial environment exists "if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c). "The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered." *Id.* An established custodial environment is one of significant duration, both physical and psychological, in which the relationship between the custodian and child is marked by security, stability and permanence. *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981); *Mogle, supra*.

Where an established custodial environment exists, a trial court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child, unless there is clear and convincing evidence that it is in the best interest of the child. MCL 722.27(1)(c); *Phillips, supra* at 24-25. Where a temporary order exists, the court must make a finding regarding the children's established custodial environment. *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000).

Defendant contends that the trial court erred because it based its decision that the children's established custodial environment was with plaintiff on the parties' October 1999 consent judgment of divorce, and did not consider any evidence regarding an established custodial environment from that point up to when the evidentiary hearings occurred in June 2004. Defendant also argues that the trial court failed to consider defendant's temporary custody of the children, and failed to specifically address the statutory factors relevant to the determination of an established custodial environment.

In *Hayes v Hayes*, 209 Mich App 385, 387-388; 532 NW2d 190 (1995), we stated:

Whether an established custodial environment exists is a question of fact for the trial court to resolve on the basis of statutory criteria. *Blaskowski v Blaskowski*, 115 Mich App 1, 6; 320 NW2d 268 (1982). The trial court's custody order is irrelevant to this analysis. *Id.* Rather, the focus is on the circumstances surrounding the care of the children in the time preceding trial, not the reasons behind the existence of a custodial environment. *Schwiesow v Schwiesow*, 159 Mich App 548, 557; 406 NW2d 878 (1987).

The record shows that the trial court based its determination that an established custodial environment existed with plaintiff on the fact that the parties entered into a consent judgment of divorce in 1999 that awarded plaintiff sole physical and legal custody of the children. It also

noted a period of separation during defendant's probation, when he was prohibited from having contact with the children. The trial court also stated, "[t]emporary custody of the children for approximately 15 months did not establish a custodial environment in *Moser v Moser*, 184 Mich App 111 (1990)," and noted that it was not its intention to create an established custodial environment with defendant when it granted defendant's emergency motion for temporary custody.

We conclude that the trial court's opinion is absent of specific factual findings beyond a general statement that the children looked to plaintiff for guidance, discipline, the necessities of life, and parental comfort. The trial court's opinion lacks any factual findings regarding the factors set forth by the Legislature as pertinent to the determination of whether there exists an established custodial environment. Therefore, remand is necessary for determination of the issue whether an established custodial environment existed with defendant and we direct the court to specifically state its findings and conclusions in its opinion.

Defendant also argues that the trial court erred because it failed to consider and conclusively state its findings and conclusions regarding each of the best interest factors. We agree. Under MCL 722.25, a custody dispute must be resolved in the best interest of the child, with the court making its determination based on the twelve factors set forth in MCL 722.23. The trial court is required to consider and explicitly state its findings and conclusions regarding each factor. *Foskett*, *supra* at 9. The court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued, or give equal weight to all factors, but may consider the relative weight of each factor as it is appropriate to the circumstances. *Fletcher*, *supra* at 883; *McCain v McCain*, 229 Mich App 123, 130-131; 580 NW2d 485 (1998). Here, the trial court did not follow our clear mandate that "'when deciding a custody matter the trial court must evaluate each of the factors contained in the Child Custody Act, MCL 722.23 . . . and state a conclusion on each, thereby determining the best interests of the child.'" *Thompson v Thompson*, 261 Mich App 353, 363; 683 NW2d 250 (2004) (citations omitted). This constitutes clear legal error. On remand, we direct the trial court to evaluate each of the best interest factors and state its conclusions on the record. Because we are remanding this case to the trial court for further proceedings, we decline to address defendant's argument that the trial court abused its discretion in making its custody decision.

We vacate the trial court's order denying defendant's motion for change of custody and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Janet T. Neff